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POPULAR WORDS IN LAW LEXICONS. II.

The non-technical common words which should have a place in a law dictionary are of two classes. First, combinations, of which the following are familiar examples: acknowledgement "separate and apart" from the husband; devise to a wife's "sole and separate use"; "instrument for the payment of money"; "under and subject to" a mortgage in a deed of conveyance; and, perhaps, "grant, bargain, and sell," as importing covenants. These and similar expressions pass unchallenged as technically legal or *quasi*-legal.

The other class consists of single words which have been construed by the courts. Illustrations are numerous. Who is a "laborer," a "mechanic," an "employee"; what is an "implement," a "tool of trade," a "machine," within the meaning of particular exemption and lien laws, has been passed upon by different courts. Decisions upon these and many other popular words, the meanings of which were directly drawn in question, become valuable as precedents.

All courts agree that the ordinary sense of any word, technical or untechnical, is to be adhered to, unless that would lead to an absurdity or to repugnancy to the rest of the instrument; in which cases that sense may be modified so as to avoid such result, *pro tanto*.

There is no room for construing an instrument when (a) it contains no word peculiar to a calling; (b) is expressed in unambiguous language; (c) the circumstances attending execution are not disputed; (d) fraud, accident, or mistake is not alleged. In any such case the parties will be held to the plain meaning of all the words. And only when a material fact is in dispute, will the contention be referred to a jury.

The rule then being (1) that a word of art (trade, profession, etc.) is presumed to have its ordinary technical sense, whatever the nature of the document, and will be so applied, unless the context or the instrument as a whole, evinces a different meaning; and (2) that a non-technical word will be given its usual popular sense, unless enlarged or restrained by associated words, the entire writing or circumstances,—consideration by a court of the meaning of a popular word rarely has reference to its accepted definition, nearly always to the claim that a particular person or object was or was not intended to be included within the description,

enumeration, or other designation. It is understood that a familiar word of itself has no *legal* meaning. Judges sometimes quote vernacular dictionaries, but in an ancillary way; never as implying that those books furnish legal definitions. The popular and the legal meaning of a common word are one. That is to say, common words have no distinctively legal meaning. To announce in a law dictionary that "in American jurisprudence, tick is a colloquial expression for credit or trust"; "log, a portion of a [?] trunk of a tree"; "root, the underground portion of a tree or plant"; "fodder, food for horses or cattle," is not to assert an untruth, except in so far as the implication is that these are the meanings peculiar to law, rather than the meanings in the country paper, in the store, the field, the backwoods.

The question is one of construction: Has the word, from its collocation, a sense inclusive or exclusive of a particular person, thing, or class? To answer this is to find out, by settled legal exegetical rules, what the contracting parties, the testator, or the law-maker, as the case may be, intended by the phraseology. Whatever is within the intention is as really within a statute, for instance, as if within the letter (language), and, though not specified, will be included. A thing within the letter is not within the purview if contrary to the spirit. What is clearly implied is a part, as if expressed.

A large number of modern cases record the judicial construction of popular words and phrases, employed in instances, in senses more or less unusual or irregular, in bonds, conveyances, leases; in mining, building, construction, farming, partnership, navigation, transportation, employment, and other contracts; in wills, pleadings, instructions, findings, awards, reports; in ordinances and statutes; even in judicial opinions and decrees, court records, proclamations, constitutions, and treaties—in every sort of document, public and private.

Inasmuch as points decided in one jurisdiction may arise in others, such interpretations of familiar words and phrases are scarcely less valuable than the delimitation of rules and the enunciation of principles.

The more important of these decisions will be painstakingly presented in any law dictionary deserving the name, along with sufficient of the context to show the precise ground of contention, the names of parties, year of decision, where reported, annotated, etc.

A law work without authorities is an anomaly.

The insertion of adjudged common words does not, however, authorize the insertion of unconstrued expressions by way of antic-

ipation of future rulings. Anticipation here, to be useful, must amount to prescience—a knowledge of the intention of, or the meaning of language to be used by, a person or persons to act in the future, perhaps as yet unborn. Hitherto, prescience in the mind of the dictionary maker has coëxisted, it would seem, with business foresight, the foresight of the tradesman.

A judge, required to interpret a common phrase, would not think of consulting a law dictionary for definitions of words in everybody's mouth. He is as competent as any, and assuredly, more competent than some law writers, to state, when needful, the meanings accorded to words in popular speech. He might be aided by references to *cases* in which similar claims were settled. To ascertain whether an expression, susceptible of different meanings, has been passed upon, he would likely turn to a good law dictionary for a digest of cases; but it is not to be believed that in all this broad land, there has been elevated to a bench, above the level of the seat of a cobbler lately commissioned a justice of the peace, a man so grossly ignorant as not to know the meaning of the hearth-and-home "terms" found in stock-in-trade law lexicons, specimens of which were given in a former paper; and, further, not comprehending them, that he would seek out a *law* lexicon for enlightenment, rather than a common school dictionary. And the same may be said in behalf of all practicing lawyers, and of all law students.

If the makers of legal vocabularies, instead of confining themselves to legal subjects, prefer to draw material from the limitless field of vernacular expression, in which each may cull according to his whim, unrestrained by dread of effective competition, except as to possible size of production, why be content, unless for purposes of ease, with rehabilitating the most common of common words, ancient and modern? words, for instance, descriptive of the familiar objects the author chances to note, as, for relief from the labor of perusing scissors-and-paste-made copy, his eye wanders from articles of office equipment to the street, with its pedestrians, quadrupeds and vehicles; thence to houses and hills beyond: features of which common things are afterward found to have left their impress on the law dictionary then in gestation!

Why not scan modern reports for words, which, while not legal in any sense, are yet not *very* common, with which decisions abound, and which a few students may not understand? Thousands of these could be "run in" as "*quasi-legal*," like the other thousands no more worthy.

Why not define semaphore, vacuum, dummy motor (50 Kan. 455); shunting cars (97 Mich. 318); arable land (91 Pa. 438); tableland (79 Iowa 621); sag-hole (64 Mich. 42; 97 *id.* 283); prairie-dog hole (42 Kan. 47); Bohemian oats (79 Iowa, 560; 84 Mich. 357)?

Why omit scaler, scale-sheet (86 Mich. 36); annular, clasp-engagement, counter-shank, disked, hemispheroidal (150 U. S. 111); alternating, amplitude, electrode, periodicity, polarity, pulsatory, sinusoidal (126 U. S. 1-584)?

Why discard incongruous (108 Pa. 604); latitudinarian (44 La. Ann. 946; 158 Mass. 58); procrustean (87 Ky. 262; 84 Me. 407); prolix (93 Mich. 509); connote (54 N. J. L. 28); equipollent (55 N. J. L. 103); rationale (49 N. J. E. 38; 54 N. J. L. 232); resume (102 Mo. 69); charivari (78 Iowa, 292); melee (106 Mo. 38)?

Why ignore clavicle, scapula (45 Kan. 653); femur (81 Mich. 637); coma (78 Iowa, 593); vermiculation (106 Mo. 361); jocko, simian, monkey-wrench?

Finding these expressions in law books does not, of course, invest them with a legal character, any more than finding in the year books, in ancient rolls and charters, and in forgotten tracts, popular words once heard in localities, but for centuries obsolete, invests such words with the character of law terms and entitles them to entry in law dictionaries. Nevertheless, accurate explanation in a law dictionary of such modern, much-used words as those last given, would likely gratify more uncritical persons than are accommodated by the present practice of reproducing indiscriminately familiar non-technical "terms," like driver, porter, yard, garden, window, door, key, air, grain, root, compost, etc., etc. In the one case just as easily and as disingenuously as in the other, Bombastes could direct his typewriter coëditress to prefix the stereotyped formula: "In American juristic relations, the universally recognized signification of this all-important substantive expression is, it imports" so and so. Thus, with the unread young man, one word as readily as another may be passed off as a technical legal term, and his favorite law dictionary and lexicon in its successive revisions, be enlarged *ad infinitum*—*ad nauseam*.

Of the making of books on the easy plan of the law glossary-mongers, there certainly is no end. Where there is no "fence," there can be no over-the-fence, and hence, no "outs."

William C. Anderson.